

CITY OF MANCHESTER
PLANNING AND ZONING COMMISSION
MEETING MINUTES
MONDAY, JANUARY 9, 2012

COMMISSIONERS

Jason Truesdell, Chairman (2014)
James Labit, Secretary (2012)
Joni Korte (2012)
Tom Brown (2013)
Jack Fluchel (2014)
Mark Smith (2014)

CITY OFFICIALS AND STAFF

Dave Willson, Mayor
Mike Clement, Alderman, Ex-Officio member
Franz Krintz, Planning and Zoning Director
Cynthia Holten, Recording Secretary

CASES

#11-SUP-006

A Special Use Permit is requested by Christopher Quail of Ridgeway Insurance Group LLC to allow Penske Truck Rentals as a separate business at their location at 14575 Manchester Road. The property is zoned C-1 Commercial.

REPRESENTATIVES OF CASES

- **Christopher Quail**
Ridgeway Insurance Group LLC - Penske
14575 Manchester Road
Manchester, MO 63011
636 779 1680
- **Damon Bonds**
Penske Trucking Company
2210 South 7th Street
St. Louis, MO 63104
314 256 4400

1. CALL TO ORDER

Commissioner Truesdell called the Planning and Zoning meeting of January 9, 2012 to order at 7:04 p.m.

2. ROLL CALL

Commissioner Truesdell asked the Recording Secretary to take roll.

Commissioner/Secretary James Labit	Present	Chairman Jason Truesdell	Present
Commissioner Jack Fluchel	Present	Commissioner Mark Smith	Present
Commissioner Joni Korte	Present	Alderman Mike Clement	Present
Commissioner Tom Brown	Present	Director Franz Krintz	Present
Mayor David Willson	Present	Cynthia Holten, Recording Secy	Present

3. **APPROVAL OF MINUTES**

Commissioner Labit made the motion to approve the minutes of December 12, 2011. Motion seconded by Commissioner Fluchel; motion approved by voice vote. The vote taken was recorded as follows:

<u>Ayes</u>	<u>Nays</u>	<u>Abstentions</u>	<u>Excused</u>
7	0	0	0

4. **APPROVAL OF AGENDA**

Commissioner Truesdell asked if there were any changes to the agenda. Commissioner Fluchel made the motion to approve the agenda as presented. Commissioner Labit seconded; motion approved by voice vote. The vote taken was recorded as follows:

<u>Ayes</u>	<u>Nays</u>	<u>Abstentions</u>	<u>Excused</u>
7	0	0	0

5. **OLD BUSINESS**

- A. **CASE #11-SUP-006** – A Special Use Permit is requested by Christopher Quail of Ridgeway Insurance Group LLC to allow Penske Truck Rentals as a separate business at their location at 14575 Manchester Road. The property is zoned C-1 Commercial.

Mr. Quail and Mr. Bonds stated their names.

Commissioner Truesdell asked the Director of Planning and Zoning Franz Kraintz if he had discussed any new development with the applicants on this case. Director Kraintz said he tried to have the applicants prepare a site plan that was more in keeping with the sentiments of the Commission. He said he had gone to the site and spoken with Mr. Quail about the possibility of graveling that rear yard. He said because this area is so narrow on the east side between Mr. Quail's building and the veterinarian's property line, that the circulation of the trucks could be kept to the west side and may not necessarily need to be graveled.

Mr. Quail said they had taken the recommendations under consideration and decided to keep the traffic to the west side of the building. He said when they had Dale come out to look at the site for gravelling, it was found the east side of the building is already graveled and has a light grass ground cover. He said it had previously been a parking lot. He said they decided that they did not want to utilize the back portion of the lot. He said they also took into consideration and talked to Dr. Steinberg and also the Glidden store two buildings away and they had no problems with the Penske trucks there. He said he was only able to get a hold of one person, Mr. Wilhelm, in the Belle Vallee residential subdivision behind the property and he didn't have a problem with them having Penske trucks. He said they weren't sure if anyone was living in at 13 and 14 Amitie Lane.

Director Kraintz said the initial discussion was in favor of keeping the business on the west side of the building. He said if the trucks are going to be parked in the rear, he suggested that this section be paved in asphalt or concrete since in a commercial area gravel is not an appropriate material even though the code allows it as an improved surface. He said if the Special Use Permit (SUP) is approved, one condition should be that the trucks must park only on the west side and as mentioned in the staff report another condition would be limiting the quantity of trucks.

Director Kraintz said he has been asked a number of times how Penske was able to have trucks out on the site prior to the SUP even before being recommended by this Commission. He said there was some amount of confusion on behalf of Penske with them not understanding that they could not operate the business until they had an SUP and a business license. He said they had their day in court about a

week ago and the judge ordered them to cease operations until those were approved and as of today they have done so. Today the trucks and signage were removed.

Commissioner Truesdell asked when the business began operation without an SUP or business license. Mr. Quail said since we were first notified that it wasn't a Ballwin location. Commissioner Truesdell confirmed that Mr. Quail was conducting the Penske business when he'd come to the Commission on December 12, 2011, and continued to conduct business even though Mr. Quail knew he still had not been granted an SUP by the City of Manchester.

Commissioner Truesdell asked if Mr. Quail stopped conducting the Penske business only after the authorities intervened. Director Kraitz said Mr. Quail had been issued a citation to appear at court. Director Kraitz said, after consulting with the City Attorney, it was determined that the citation could stand as a warning not to continue doing business until the Special Use Permit was approved rather than taking more draconian measures and physically shutting the business down. Court action would depend on whether he complied with all aspects of the zoning code. Mr. Quail said they were under the assumption that that was what he was supposed to do. Director Kraitz said at court the judge ordered Mr. Quail to stop conducting the Penske business.

Commissioner Labit referred to the original photo showing six trucks parked on site and said he was going to ask about the additional three or four trucks also parked on site this last weekend, but that was before he learned that Mr. Quail had already been operating the Penske Truck Rental business when he applied for an SUP at the last Planning and Zoning meeting on December 12, 2011 and failed to mention that to the Commission. He said and now he's learned that you had to be cited by the City of Manchester and taken to court to cease and desist because you'd been operating your business before you had the proper authorization to do so. He said because of these underhanded actions he questioned about Mr. Quail's veracity.

Mr. Quail said they had been totally truthful with the City of Manchester. He said when Penske contacted them, they said they did a Google search on the property at 14575 Manchester and the address was a Ballwin address. They were under the assumption they would be moving their location from one location in Ballwin to another location in Ballwin. He said they moved forward believing they were operating a legitimate business with no malice on his part. He said they have been totally honest with Mr. Kraitz and has accepted his guidance through this whole process. He said they hadn't hidden anything and added they can't hide trucks.

Commissioner Labit asked Mr. Quail if he has an insurance business in the building he operates Penske from. Mr. Quail confirmed he does. Commissioner Labit asked him who issued his business license for his insurance business. Mr. Quail said the City of Manchester. Commissioner Labit asked how Mr. Quail determined that this same property that was issued a business license from the City of Manchester was in Ballwin because of a Google search. Mr. Bonds interjected that it was his fault. Commissioner Labit said Mr. Quail is the individual who holds the business license issued by the City of Manchester for that property, who knows he's in the City of Manchester and when Penske approached him, Mr. Quail should have said he is in the City of Manchester. Mr. Bonds said he was under the assumption that he was in the City of Ballwin. Commissioner Labit asked Mr. Bonds if he and Mr. Quail talk to one another and said he didn't care what Mr. Bonds assumption was because Mr. Quail knew from Day One that his assumption was wrong. Mr. Quail said it wasn't clear. Commissioner Labit said now Mr. Quail is requesting an SUP on his high level of honesty. Mr. Bonds started to come to Mr. Quail's defense, but Commissioner Labit said there is no defense for that and could not accept any explanation from Mr. Bonds. Commissioner Labit said Mr. Quail is the one who has a business in this City and he is the one who knows that he works in this City and an explanation from Mr. Bonds is irrelevant. Mr. Quail said he had been told by Penske that they had approval to operate because of the Google search that showed a Ballwin address and I assumed that Penske knew the property was located in Manchester. Commissioner Labit said he would not belabor this conversation any further and stated he wasn't sure how to move forward with this.

Commissioner Labit asked if Mr. Quail was still intending to do the gravelling and paving he'd stated in his offering. Mr. Quail said he would. Commissioner Labit asked if the Commission could believe that.

Commissioner Fluchel asked how many trucks Mr. Quail will have on the side of his building at any one time. Mr. Quail said they can accommodate six comfortably. Commissioner Fluchel asked what would happen if there were more than six trucks and wanted some assurance that that won't happen. Mr. Quail said it already has happened. He said they all were comfortably parked on asphalt on the side of the property line but were trucked out within a few hours. Commissioner Fluchel commented that it doesn't seem that more than six trucks would fit on that property without causing a problem for the neighbors.

Commissioner Korte asked if the east side would be strictly for employee parking and the west side would only be for the trucks. Mr. Quail said at one point they had considered doing a round-about, as suggested at the last meeting, but we didn't feel that was feasible. Commissioner Korte asked with the present set up, were the trucks able to be backed out and turned around on the west and use the shared egress and ingress without a problem. Mr. Quail confirmed they are.

Commissioner Brown said he agreed with what Commissioner Labit had said. He said he'd visited Mr. Quail's business last week and was surprised to discover that there were several trucks on the property and the Penske Truck Rental was already operating. He said he'd talked to one of the Mr. Quail employees and asked the employee if Mr. Quail had talked to the neighbors and at the time he had not. He asked Mr. Quail if when he'd come before the Commission on December 12, 2011 to ask for an SUP that he had already been operating the Penske business. Mr. Quail confirmed.

Commissioner Brown said to him this was a slap in the face to this Commission. He asked Mr. Quail if Penske told him that they were applying for an SUP at Ballwin. Mr. Quail said they did not. Mr. Bonds said they already have an SUP from Ballwin and this location was the replacement for Ballwin. Commissioner Brown said this location is in Manchester not Ballwin. Mr. Bonds said when he'd done a search on Mr. Quail's business it showed a Ballwin address. Commissioner Brown explained that Ballwin appears as the city for nearly all Manchester addresses because Ballwin is the designated post office for most of the City of Manchester. He commented that as an experienced business man, Mr. Bonds should have known the proper procedures to ascertain what city he was going to be doing business in and not base it on a Google search and he should have asked Mr. Quail what city he was based. He asked Mr. Quail to explain why he allowed Penske to apply for an SUP in Ballwin when he knew he was in Manchester.

Commissioner Brown said he went to Ballwin and talked to a Thomas Aiken and asked him if Ballwin had granted a business license. Mr. Aiken said they would not put themselves in that position. He asked Mr. Quail exactly how long he had been in business with Penske. Mr. Quail said it was the week before December 4, 2011. Commissioner Brown said so Mr. Quail knew he was operating the Penske business even before he came before the Commission the first time and asked why he didn't tell the Commission at that meeting. Mr. Quail said they were working with Director Kraintz on plans and getting compliance with the City and felt we were working with all of Manchester.

Director Kraintz said before the citation was written he had no proclamation that there would be trucks on site prior to the SUP. He said on the testimony heard at the last meeting, the impression was that these were just in time deliveries, the storage and number of vehicles would be minimal and not be seen. He said after the citation he didn't expect any of this to occur. He said after the December 12 meeting, it became very evident that this was a fully operational business. He said this was the point he made to the court and stated it wasn't fair for this operation to continue without an SUP and business license.

Mayor Willson said he found it interesting that if one Googles him, it will show he lives in Ballwin, but he can't live in Ballwin and be the mayor of Manchester which he is and has been for the last several years. He said if you Googled anyone on this Commission, it would show that we all live in Ballwin because of the way the post office is set up. He said he can understand the confusion, but he can't accept the excuse that Penske based their decision to do business in Manchester because of a Google search and Mr. Quail knowing his business is in Manchester.

Commissioner Smith said he'd driven by the site after the last meeting and at that time there was one very large Penske drive in the parking lot. He said the perspective of just this one large truck parked there was enough to convince him that it was inappropriate use of that property and can't imagine having six or more trucks on this property on a regular basis.

Alderman Clement said he voices the same concerns that the other Commissioners have. He said he drove by shortly after our last meeting and called Director Krintz after he saw several trucks on the parking lot. He said he was dumbfounded as the others and wanted to know how this could be. He said this is a mess and whether it is approved or denied by the Commission tonight, it will still come before the Board of Aldermen and the same questions and comments will be raised.

Commissioner Truesdell said he'd expressed serious concerns about this business at the last meeting. He said he always wants to encourage new business in Manchester and was prepared tonight to try to find ways in which Mr. Quail could conduct business under the conditions of an SUP, but this new piece of information infuriated him. He said there is a legal term called willful blindness which Mr. Quail committed when he knew he was in Manchester. He said he felt Mr. Quail was playing games with this Commission and in a sense thumbing his nose at the City of Manchester to operate without a business license or an SUP. He said he has no confidence that anything Mr. Quail agrees to will be adhered to and based on that he is not prepared to support a SUP. He said you cannot get ahead of the process this way and you cannot try to game the system. He commented that putting those trucks out there during the two weeks prior to court was not a wise move.

Mr. Quail said he doesn't know where the confusion came in beyond Penske Googling and saying we were a legitimate business and his accepting their guidance. He said that was a mistake, but he did believe that from December 4 on we were getting counsel from the City and that we were in compliance. He said he was given two choices: Shut down December 4 or receive a citation and have a court hearing. He said he would have shut down December 4. He said he didn't hide the trucks, there was no thumbing of noses and that's not how he operates business.

Commissioner Truesdell explained that a citation states you are in violation of the City's Zoning Ordinances. He said pending your day in court, you have been accused of such and have the right to defend yourself. At the same time you came before this Commission requesting a Special Use Permit knowing that this was required to conduct this business in the City of Manchester, yet you omitted a very important piece of information that you had already been conducting the Penske business at that location. He said every applicant that comes before the Commission makes it imminently clear that they are looking to start this business and seeking a Special Use Permit. He said this would have been a bit more excusable had Mr. Quail simply not known that an SUP was required, but clearly he did know and evidently tried to claim the Ballwin issued SUP was valid. Mr. Bonds again stated that he was the one that told Mr. Quail about the Ballwin SUP thinking that Mr. Quail was in Ballwin. He said he only found out that the location was in Manchester after one of the Manchester employees cited him. Commissioner Truesdell said Mr. Quail knew he wasn't in the city of Ballwin and that he has a business license issued from the city of Manchester. Mr. Quail said he did know that but the disconnect was that he and Penske didn't connect and his fault was not questioning Penske. Commissioner Truesdell said but Mr. Quail knew he did not have a Special Use Permit. Mr. Quail said he believed he did have a Special Use Permit. Commissioner Truesdell asked from Ballwin to which Mr. Quail did not reply.

Mr. Bonds said he believed the SUP was for Ballwin. He said Penske doesn't apply for SUPs, the business that wants to employ us applies for the SUP. He says when that business that applied for it no longer wants to be affiliated with us, then we'll transfer that SUP onto the new business and that's what he thought he was doing. Commissioner Truesdell said SUP's are granted based on the location and asked how Penske transfers SUPs from one party to another at different locations. Mr. Bonds said that is how it's done in Florissant, MO and Bloomington, IL. Commissioner Truesdell said that doesn't make any sense to this Commission. He said there are zoning laws to be considered, as well as a review of the non-conforming use of a business at that location and that that use cannot be transferred.

Commissioner Labit said it is the hope of this Commission to get new business in Manchester and that those people feel comfortable and thrive here. He said what we are faced with here is two companies responding to the Commission's previous suggestions and requests. He said regardless of what has been done in the past, at this point, this Commission should consider how to move forward and ask ourselves if we think this is a good business for the City or not. The applicants' transgressions have been addressed by our court, they have returned and responded to our questions and requests, and now we did to focus and make a decision.

Commissioner Truesdell said he agreed with Commissioner Labit but added that part of this Commission's responsibilities is to determine the veracity of the applicant to determine the applicant will adhere to the obligations that are agreed to within the SUP. He said in this case the big one is the limit of six trucks, which some commissioners feel are too many. He said we have an applicant who has shown that he does not adhere to the City's ordinances and has admitted that this will be an ongoing issue. He said knowing this, do we want to allow this applicant to task our police force with the burden of constant enforcement of this issue for the City.

Commissioner Brown said his main concern is the possibility of opening the door to other applicants who learn of and copy Mr. Quail's and Penske's actions. He said as much as he'd like to see new business come into the City, he cannot support a favorable recommendation of an SUP for this.

Alderman Clement said he agreed with Commissioner Labit. He said the point here is for the Commission to either recommend or oppose the applicant's request. He said however this is framed he emphasized that the Commission not overlook all the conditions of the SUP. He said those include all the conditions and restrictions suggested by this Commission and by Director Kraintz such as resurfacing of the west side of that building and limit of trucks parked at any one time. He said however the Commission votes tonight, it will come before the Board of Aldermen.

Mayor Willson commented on his role as representative of the City of Manchester. He said he goes out and talks to the businesses and residents and gets their impression of Manchester and its employees. He said he'd recently visited several new businesses. He said of all the businesses he's spoken to not one had a negative comment about the City. He said the business owner said they were very impressed by the way they were treated by Director Kraintz and the front desk ladies when going through the process of opening up their businesses, by our code enforcement officers, police, parks and public works. He said the entire City strives to make Manchester a great place to live and work and this Commission does a thorough job of reviewing the applicants to make sure the business is right for the City and for the applicant.

Commissioner Smith reiterated that his impression was that six trucks would be too many for that property.

Commissioner Brown made the motion to deny the Special Use Permit for this business. He said although he doesn't like turning business away, he could not accept the applicant's actions and responses.

Before the motion was seconded, Director Kraintz said per discussions with the City Attorney, the motion must be made in the positive. Commissioner Truesdell said City Attorney Gunn gave the opinion that a motion can be made in the negative. He said a motion can be made not to approve something. He also said that should a Commissioner make a motion in favor of a case that person cannot speak against the case.

Commissioner Labit said he takes exception to that statement. He said the correspondence he'd read clearly showed that that is not the case. He said from a petitioner is different from the normal course of motioning as defined in Robert's Rules of Order. He said we ask questions that are fact finding in order to make up our minds and make a determination as opposed to putting a motion before the floor that's a motion that we might present on behalf of some entity. He said he'd sent this back to the City Attorney and there was no rebuttal with the assumption that the City Attorney accepted that. He said he's also shown from Robert's Rules of Order where a second would not necessarily constitute support

for a particular motion only the fact that the person providing the second felt that the motion should be on the table. He concluded that he did not agree with Commissioner Truesdell's assessment.

Commissioner Truesdell said that it had been his review of the City Attorney's advice. He said he thinks the Commission cannot make the motion to table this case and seek an opinion from the City Attorney on the appropriate way to position this motion.

Commissioner Brown made the motion to make an unfavorable recommendation to the Board on CASE #11-SUP-006. Commissioner Truesdell seconded the motion. The vote taken was recorded as follows:

<u>Ayes</u>	<u>Nays</u>	<u>Abstentions</u>	<u>Excused</u>
Commissioner Brown	Commissioner Fluchel	0	0
Commissioner Smith	Commissioner Labit		
Commissioner Korte			
Commissioner Truesdell			
Mayor Willson			

6. NEW BUSINESS

No new business.

7. PLANNING AND ZONING DIRECTOR'S REPORT

Planning and Zoning Director Kraintz said there currently were no cases scheduled for the January 23 meeting, but should soon be getting information about that earlier requests for the text amendment on the residential uses in the commercial district as well as other matters that are pending. He said he not heard from Hoods and wasn't sure if or when Hoods was still interested in returning.

Commissioner Truesdell asked about the court's ruling on Mr. Quail's citation. Director Kraintz said the court asked for the City's recommendation and he told the court it wasn't fair that Penske continues to operate without a business license or Special Use Permit. Director Kraintz said he was asked if Penske has been cited every day and he replied they had not because the City did not want to be too harsh with him and expected to work with him to bring it into compliance.. He said he confirmed with the judge that the business could be shut down as recommended. Director Kraintz added that over the weekend both the signage and trucks were still on the property and it wasn't until today that everything had been removed. He said the applicant has until January 18 to be compliant.

Commissioner Truesdell asked if the court was waiting for this Commission's vote on the Special Use Permit. Director Kraintz said he thought the court was awaiting the outcome of the Special Use Permit process before making a judgment on the case. He said the court will look for a report from staff stating that they are in compliance with the court order to cease and desist.

Director Kraintz said he did not tell the Commission at the December 12 meeting that the applicant was under citation because he wanted to keep the two things separate and didn't want to unduly influence consideration by the Commission. He said as stated by Commissioner Labit the issue was determining what the best use of this site is. He said however he didn't expect Mr. Quail to flaunt it as he had particularly after the meeting on December 12, 2011. Commissioner Truesdell said the applicant should have told the Commission during that meeting.

8. EX-OFFICIO'S REPORT

Alderman Clement said at the last Board meeting there was the first reading of the change to the C-1 Commercial Zoning District which came before this Commission back in December. He said there will be

some tweaking on how we define that change and the bill will have its second reading at the next Board meeting. The definition will be narrowed down a bit from just "lawn care services."

Director Kraitz said one of the questions that came up from that was is the Commission fully anticipating a recommendation that it include all lawn care services or just those presented by Lawn Managers, which was fertilizing and lawn treatment.

Alderman Clement asked what the City Attorney's opinion on that was. Director Kraitz said it has been narrowed down to just lawn treatment as is the intent of this Commission and not the full gamut of lawn care which could include mowers, equipment, and maintenance. Alderman Clement said the City is better off having a more restrictive ordinance then having it really broad. He added if a future applicant were to request a full lawn care service, then the Commission and Board can deal with that at that time.

Alderman Clement said the City currently has 500 tons of salt in the salt dome with another 500 tons on order. This order was reduced to 100 tons and hopefully this doesn't jinx the winter weather.

9. COMMENTS FROM THE PLANNING AND ZONING COMMISSION

Commissioner Labit said the narrowing down of the lawn care services is fitting and reasonable.

Commissioner Labit again referred to the proper verbiage of a motion and said the tradition has always been that the requesting entity is always in the affirmative. He said if there are enough "no" votes, it will fail, but it's a different feel from having a motion to deny. He said he was uncomfortable with the motion to deny as opposed to accept. He said frankly had the motion been to affirm the request he would have voted "no." Commissioner Truesdell asked about making a motion to table indefinitely. Commissioner Labit felt that was wrong since the applicant comes before the Commission with a bona fide request and they need an "aye" or "nay". Director Kraitz said the code gives 60 days for a decision.

Commissioner Truesdell said he would follow up with the City Attorney and obtain a firm opinion on that. He said he would prefer that there is a positive motion made, but his read of the City Attorney's opinion was that one cannot speak against a motion that one made.

Commissioner Fluchel said he had not spoken against the case but asked questions. He said Commissioner Labit never said he would vote against it, but rather asked questions also and voiced his frustrations as some of you did. Commissioner Fluchel said a couple of the commissioners stated they would vote "no". He said we should make the motion that we normally would and then let the votes fall where they may.

Mayor Willson asked why the Commission has to determine if it is a positive or negative motion. Commissioner Fluchel said that if it is a positive motion, than all the conditions and requirements must be attached but if it's a negative motion then those are not necessary. Director Kraitz said the "ayes" are more of a reflection on a positive vote.

Discussion continued on the language, context and meaning of motions.

10. ADJOURNMENT

Commissioner Truesdell made the motion to adjourn the Planning and Zoning Commission meeting of January 9, 2012 at 8:10 p.m. Motion seconded by Commissioner Brown; motion approved by voice vote. The vote taken was recorded as follows:

<u>Ayes</u>	<u>Nays</u>	<u>Abstentions</u>	<u>Excused</u>
7	0	0	0

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